IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6523 OF 2006

Bassein Catholic Coop.Bank Ltd. .. Petitioner

Versus

The Union of India & Anr. .. Respondents

Mr.D'Lima i/b. D'Lima and Associates for petitioner

Mrs.Neeta Masurkar with R.C.Master with D.A.Dubey i/b. H.P.Chaturvedi for respondent No.1

Mr.A.H.Palekar, A.G.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 16th June 2007.

P.C.

. The petitioner Cooperative Bank is aggrieved by an order passed by the Cooperative Court and which is confirmed by the Cooperative Appellate Court, Maharashtra State on 28th March 2006.

2. These orders permit joinder of Union of India through Assistant Commissioner, Central Excise, Bhyander Division, Thane II to the dispute being Dispute No.CC No.362 of 2002 now numbered as CCT 655 of 2006 and pending before Cooperative Court at Thane.

3. The presence of borrowers who are respondent Nos. 3 to 10 to this petition is not necessary.

4. The contention raised by Mr.D'Lima is that the powers conferred by Order I Rule 10(2) of the C.P.C. may be applicable to proceedings before Coop.Court but by no stretch of

imagination, it can be said that Union of India is a necessary party to the dispute between a Coop.Bank and its Members/borrowers, who have borrowed monies against securities. The dispute is pending and it would be resolved in accordance with the contract between the Lender and Borrower. There are no further disputes which are to be decided or taken cognisance of in such a Dispute. At this stage, presence of Union of India, which may have claims pending against the borrowers on account of excise dues/duty is neither necessary nor proper.

5. He, therefore, submits that the impugned order be quashed and set aside.

6. Apart from relying upon several decisions which enunciate the principles which have to be applied while considering applications for joinder of parties, he brings to my notice the scheme of Excise Act and contends that at this

stage, when the dispute is pending and award is yet to be delivered, there is no question of petitioners in any manner affecting rights of the Excise Department nor the borrower interfering with the same.

7. To avoid any controversy, Mr.D'Lima after taking instructions states that the bank is prepared to give written undertaking to this Court so also Cooperative Court that in case the dispute is allowed and award is made in favour of petitioner - Coop.Bank, as and when the same is sought to be executed, prior intimation would be given to Excise Deptt. viz., Assistant Commissioner.

8. Mrs.Masurkar relies upon the scheme of Excise Laws and several decisions of the Supreme Court to contend that the Excise Duty is paramount and ranks higher in priority. She submits that once the securities of the bank

include the moveables and other properties of the borrower against which even the Excise Deptt. can proceed in accordance with law, then, presence of the Excise Deptt. is necessary for effective and complete resolution of the dispute.

9. In my view, when the Coop.Court is yet to decide the matter finally, it would not be fair, just and proper to pronounce upon the rival contentions. Whether presence of Excise Deptt. in such a dispute is necessary or its joinder as a proper party is permissible or not are matters which, in my opinion, can be decided in an appropriate case. That issue is kept open, in the light of the undertaking that petitioner bank has given before me. Accordingly, keeping rival contentions open, including claims and priorities to be gone into at an appropriate stage, so also accepting the undertaking of petitioner Coop.Bank before me, writ petition stands disposed of with no orders as to costs.

10. Petitioner bank shall file an undertaking in this court specifically stating therein that upon an ward being made in its favour in the above mentioned cooperative case and before the same is put in execution, it shall inform the Union of India, through Asstt. Commissioner, Central Excise, Bhayander Division, Thane II in writing that it proposes to execute the award by proceeding against the mortgaged assets of the borrower. Needless to state that while intimating so, the Coop.Bank must forward a copy of the award and related documents to the said Assistant Commissioner. The above undertaking to be filed by General Manager of Bassein Catholic Coop.Bank Ltd. within two weeks from today.

11. Needless to state that the pendency of the dispute does not prevent the Excise Deptt. from exercising such powers as are permissible and available in law to it to recover its dues

from the first respondent borrower.

(S.C.Dharmadhikari, J)